



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

NSLP CN# 31-08

MEMORANDUM

To: School Health & Nutrition Program Sponsors

From: Mary Szafranski, Deputy Associate Superintendent
Health & Nutrition Services

Nicholas Dunford, Financial Services Director
Health & Nutrition Services

Original Signed

Date: June 30, 2008

RE: **Second Clarification of memo NSLP CN# 14-08** -- Allowable costs must be the net of all discounts, rebates and applicable credits.

This memo serves as the second clarification of memo **NSLP CN# 14-08**. Specifically, this memo serves to provide explicit guidance with regard to the requirement that all contracts must include language that insures **allowable costs paid from the nonprofit school food service account must be the net of all discounts, rebates and applicable credits.**

- 1) All contracts that have allowable costs paid from the nonprofit school food service account **must have the required language.**
 - This includes contracts with Food Service Management Companies (FSMC).
- 2) The required language is a material change to a contract and therefore **can not be added via an amendment.**
 - This means that the proper procurement procedures must occur to establish a new contract with the required language.
- 3) All contracts must have the required language **by the start of program year (PY) 2010.**
 - This means bidding must occur in time for contract to be executed by July 1, 2009.

Therefore, if you have an existing contract that does not contain the required language, the renewal option for PY 2010 is not available and you MUST go out for bid*.

To assist LEAs in their compliance efforts, USDA had provided the following prototype contract language requiring the return of purchase incentives to LEAs:

“The [LEA] shall ensure that [VENDOR/FSMC] fully discloses all discounts, rebates, allowances and incentives received by [VENDOR/FSMC] from its suppliers. If the [VENDOR/FSMC] receives a discount, rebate, allowance, or incentive from any supplier, [VENDOR/FSMC] must disclose and return to [LEA] the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of [LEA]. All discounts, rebates, allowances, and incentives must be returned to [LEA] during a mutually agreed upon timeframe that is beneficial to [LEA].”

LEAs may also opt to use the language found in 7 CFR 210.21(f)(i):

“Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.”

It is important that LEAs consult with their own legal counsel regarding the use of any particular contract language, to ensure that all Federal, State and local requirements are met.

If you have questions or concerns regarding this memo, please contact Nicholas Dunford at (602) 542-8724 or email at Nicholas.Dunford@azed.gov.

****Please note that this contradicts paragraph 3.b. of memo NSLP CN# 14-08 and that 3.b. was NOT correct.***